

§16604. Administrative enforcement

1. Issuance of order or notice. If the administrator determines that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding or is about to materially aid an act, practice or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may:

A. Issue an order directing the person to cease and desist from engaging in the act, practice or course of business or to take other action necessary or appropriate to comply with this chapter; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. Issue an order denying, suspending, revoking or conditioning the exemptions for a broker-dealer under section 16401, subsection 2, paragraph A, subparagraph (4) or (6) or an investment adviser under section 16403, subsection 2, paragraph A, subparagraph (3); or [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. Issue an order under section 16204. [PL 2005, c. 65, Pt. A, §2 (NEW).]
[PL 2005, c. 65, Pt. A, §2 (NEW).]

2. Summary process. An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any censure, bar, civil fine or costs of investigation the administrator will seek, a statement of the reasons for the order and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a censure, bar or civil fine or requirement for payment of the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. A summary order issued against any person becomes a final order 30 days after the administrator mails notice to the interested parties of the right to request a hearing if they fail to request a hearing or on the date of the hearing if the person requesting the hearing fails to appear. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.
[PL 2007, c. 14, §12 (AMD).]

3. Procedure for final order. If a hearing is requested or ordered pursuant to subsection 2, a hearing must be held pursuant to the Maine Administrative Procedure Act. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record in accordance with the Maine Administrative Procedure Act. The final order may make final, vacate or modify the order issued under subsection 1.
[PL 2005, c. 65, Pt. A, §2 (NEW).]

4. Civil fine; final orders and remedies. In a final order under subsection 3, the administrator may: order remedies described in subsection 1; censure that person; bar that person from association with any issuer, broker-dealer or investment adviser in this State; order restitution; or impose a civil fine not to exceed \$5,000 per violation. For a violation involving an investor 65 years of age or older, the amount of the civil fine may be doubled to an amount not to exceed a maximum of \$10,000 per violation.
[PL 2013, c. 39, §3 (AMD).]

5. Costs. In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.
[PL 2005, c. 65, Pt. A, §2 (NEW).]

6. Filing of certified final order with court; effect of filing. If a petition for judicial review of a final order is not filed in accordance with section 16609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced or satisfied in the same manner as a judgment of the court.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

7. Enforcement by court; further civil fine. If a person does not comply with an order under this section, the administrator may request that the Attorney General petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in contempt of the order. The court may impose a further civil fine against the person for contempt in an amount not to exceed \$10,000 per violation and may grant any other relief the court determines is just and proper in the circumstances.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

8. Appointment of presiding officer. For purposes of any hearing conducted pursuant to this section, the administrator may appoint a qualified person to preside at the hearing and to make proposed findings of fact and conclusions of law. The responsibility for the entry of the final findings of fact and conclusions of law and for the issuance of any final order remain with the administrator.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 65, §A2 (NEW). PL 2007, c. 14, §12 (AMD). PL 2011, c. 37, §3 (AMD). PL 2013, c. 39, §3 (AMD).

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